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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**  
10 **SEATTLE DIVISION**

11 JOHN DOE #1, an individual, JOHN DOE #2,  
12 an individual, and PROTECT MARRIAGE  
WASHINGTON,

13 Plaintiffs,

14 vs.

15 SAM REED, in his official capacity as  
16 Secretary of State of Washington, DEBRA  
GALARZA, in her official capacity as Public  
Records Officer for the Secretary of State of  
Washington,

17 Defendants.  
18

No.

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

19  
20 John Doe #1, an individual, John Doe #2, an individual, and Protect Marriage Washington  
21 complain and allege as follows:

22 **INTRODUCTION**

23 **1.** This is a civil action for declaratory and injunctive relief arising under the First and  
24 Fourteenth Amendments to the Constitution of the United States. This case concerns the  
25 constitutionality of the Washington Public Records Act, Wash. Rev. Code § 42.56.001, *et seq.*,  
26 as it applies to the public release of referenda petitions submitted to the Secretary of State of  
27 Washington.  
28

**Verified Complaint**

1

**BOPP, COLESON & BOSTROM**  
**1 South Sixth Street**  
**Terre Haute, Indiana 47807-3510**  
**(812) 232-2434**

1           2. The rights of citizens to peaceably assemble and petition the government for redress of  
2 grievances are among the fundamental rights protected by the Bill of Rights. Inherent within  
3 these rights is the right of individuals to engage in anonymous speech, speech that has “played an  
4 important role in the progress of mankind.” *McIntyre v. Ohio Elections Commission*, 514 U.S.  
5 334, 341 (1995); *id.* at 343 n. 6 (citing the Federalist Papers as perhaps the most famous example  
6 of anonymous writing in our nation’s political history). And as the Supreme Court has  
7 recognized, there is nothing inherently suspect with an individual wanting to keep his or her  
8 support for an issue private. *Id.* at 341-42 (“The decision in favor of anonymity may be motivated  
9 by fear of economic or official retaliation, by concern about social ostracism, or merely by a  
10 desire to preserve as much of one’s privacy as possible.”)

11           3. The public release of a referendum petition containing the names and addresses of over  
12 138,500 Washington residents pursuant to Washington’s Public Records Act threatens to  
13 undermine the First Amendment’s goal of encouraging “uninhibited, robust, and wide-open”  
14 debate, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). By publicly disseminating the  
15 names of individuals signing a referendum petition, individuals and organizations hope to make  
16 it personally, economically, and politically unpopular to advocate a position that would seek to  
17 preserve the sanctity of marriage, as traditionally defined as between one man and one woman.

18           4. Given the sensitive First Amendment rights at issue, Plaintiffs complain that the State of  
19 Washington lacks a compelling interest sufficient to justify the public disclosure of referendum  
20 petitions.

21           5. In the alternative, Plaintiffs complain that, if the State possesses a compelling state  
22 interest, the Public Records Act is unconstitutional because there is a reasonable probability of  
23 threats, harassment, and reprisals if the names and addresses of the petition signers are publicly  
24 released.

25           6. Given the nature of the rights asserted, the failure to obtain injunctive relief from this  
26 Court will result in immediate and irreparable injury to Plaintiffs.

## JURISDICTION AND VENUE

7. This case raises questions under the Constitution of the United States and 42 U.S.C. § 1983, and thus this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331 and 1343(a).

8. The Western District of Washington is the proper venue for this case pursuant to 28 U.S.C. § 1391(b) because Defendants Reed and Galarza reside in this district, Plaintiff Protect Marriage Washington has its principle place of business in this district, and Plaintiffs John Doe #1 and John Doe #2 reside in Washington.

## PARTIES

9. Plaintiff John Doe #1 is an individual and resident of Stevens County, Washington. Plaintiff John Doe #1 signed the Referendum 71 petition.

10. Plaintiff John Doe #2 is an individual and resident of Cowlitz County, Washington. Plaintiff John Doe #2 signed the Referendum 71 petition.

11. Plaintiff Protect Marriage Washington is a State Political Committee organized pursuant to Wash. Rev. Code § 42.17.040, to place Referendum 71 on the ballot and to encourage citizens to reject SB 5688, and has its principal place of business in Snohomish County, Washington.

12. Defendant Sam Reed is the Secretary of State of Washington. In his official capacity, Defendant Reed is responsible for receiving referendum petitions pursuant to Wash. Rev. Code § 29A.72.010 and for making public records available pursuant to the Public Records Act. Wash. Rev. Code § 42.56.001 *et seq.*

13. Defendant Brenda Galarza is the Public Records Officer for Defendant Reed. Upon information and belief, Defendant Galarza has been appointed by Defendant Reed, pursuant to Wash. Rev. Code § 42.56.580, to serve as the point of contact for members of the public when requesting disclosure of public records from the Secretary of State and to oversee the agency's compliance with the Public Records Act.

## FACTS

14. Pursuant to Wash. Const. art. II, § 1(b), the referendum power is reserved by the people of Washington State.

15. The referendum power grants Washington citizens the right to call a referendum on any act, bill, law, or any part thereof passed by the legislature by submitting a petition to that effect to the Secretary of State. Wash. Const. art. II, § 1(b).

16. If a petition submitted to the Secretary of State contains at least four percent of the votes cast for the office of governor at the last gubernatorial election preceding the filing of the referendum petition, the effective date of the act, bill, law, or any part thereof is delayed until the electorate has an opportunity to vote on the referendum. Wash. Const. art. II, §§ 1(b) & (d).

17. An act, bill, law, or any part thereof, subject to a referendum, becomes law only if a majority of the votes cast are in favor of the referendum. Wash. Const. art. II, § 1(d).

18. On January 28, 2009, Washington State Senator Ed Murray introduced Senate Bill 5688 (“SB 5688”), a bill designed to expand the rights, responsibilities, and obligations accorded state-registered same-sex and senior domestic partners to be equivalent to those of married spouses. The legislation is commonly referred to simply as the “everything but marriage” domestic partnership bill.

19. On March 10, 2009, after various amendments, the Washington Senate passed Second Substitute Senate Bill 5688.

20. On April 15, 2009, the Washington House of Representatives passed Second Substitute Senate Bill 5688.

21. On or about May 4, 2009, Larry Stickney filed notice with the Secretary of State of his intent to circulate a referendum petition related to SB 5688. The Secretary of State assigned the title “Referendum 71.”

22. On or about May 13, 2009, Protect Marriage Washington organized as a State Political Committee pursuant to Wash. Rev. Code § 42.17.040.

23. Protect Marriage Washington’s purpose is to circulate a referendum petition on SB 5688 and to encourage voters to reject SB 5688.

1       **24.** Larry Stickney is the campaign manager of Protect Marriage Washington.

2       **25.** As the campaign manager for Protect Marriage Washington, Larry Stickney has  
3 received a large number of emails from people who disagree with his position on marriage. True  
4 and correct copies of some of these emails are attached to this Complaint as Exhibit 1. Some of  
5 these emails are threatening and/or harassing. For example, one threatening email states: "You  
6 better stay off the olympic peninsula. . it's a very dangerous place filled with people who hate  
7 racists, gay bashers and anyone who doesn't believe in equality. Fair is fair." Another email  
8 threatened the signers of the Referendum 71 petition with boycotts: "We shall boycott the  
9 businesses of EVERYONE who signs your odious, bigoted petition." Other emails are offensive  
10 and harassing: "Dear God fearing hate mongerers - . . . Maybe you just want to feel a cock in  
11 your ass and hate yourself for it. Whatever. Praise Jeebus you retarded fuckholes!"

12       **26.** These threats have caused Larry Stickney a great deal of worry for his safety and the  
13 safety of his family.

14       **27.** Early in the campaign to circulate the Referendum 71 petition, Larry Stickney made his  
15 children sleep in an interior living room because he feared for their safety if they slept in their  
16 own bedrooms.

17       **28.** In late June an individual was seen taking pictures of Larry Stickney's home while his  
18 daughter played outside.

19       **29.** Larry Stickney filed a complaint with his local sheriff because of threats on a local blog.  
20 One of the blog posts stated: "If Larry Stickney can do 'legal' things that harm OUR family, why  
21 can't we go to Arlington, WA to harm his family?" A true and correct copy of Larry Stickney's  
22 email correspondence with the Sheriff is attached to the Complaint as Exhibit 2.

23       **30.** Larry Stickney has also received threatening and harassing phone calls from individuals  
24 in the middle of the night. For example, shortly after Referendum 71 was presented to the  
25 Secretary of State on May 4, 2009, he received a phone call at 2:00 a.m. from a woman who  
26 sounded frantic and deranged, and who said various obscene and vile things to him.

27       **31.** Since Referendum 71 was submitted to the Secretary of State for review on May 4,  
28 2009, numerous news sources and blogs have focused their attention on intimate details of Larry

1 Stickney's personal life. For example, "The Stranger," an alternative Seattle newspaper,  
 2 published details of his divorce that occurred fifteen years ago. A true and correct copy of that  
 3 article is attached to this Complaint as Exhibit 3.

4 **32.** On May 18, 2009, Washington Governor Christine Gregoire signed Engrossed Second  
 5 Substitute Senate Bill 5688.<sup>1</sup>

6 **33.** Upon information and belief, the group WhoSigned.org threatened to publish the names  
 7 of every individual signing the Referendum 71 petition on or about June 1, 2009.

8 **34.** Upon information and belief, Plaintiffs believe that WhoSigned.org intends to make an  
 9 end-run around Wash. Rev. Code § 29A.72.230 (prohibiting proponents and opponents of a  
 10 referendum petition from making records of the names, addresses, and other information on the  
 11 petition during the verification and canvass process), by requesting copies of the petitions  
 12 submitted pursuant to Washington's Public Records Act, Wash. Rev. Code § 42.56.001 *et seq.*

13 **35.** On or about June 2, 2009, Dave Ammons, communications director for Defendant  
 14 Reed, posted a blog entry on the Secretary of State's website suggesting that the Secretary of  
 15 State intended to comply with WhoSigned.org's Public Records request. A true and correct copy  
 16 of that blog post is attached hereto as Exhibit 4.

17 **36.** On or about June 9, 2009, the group KnowThyNeighbor.org issued a joint press release  
 18 with WhoSigned.org again threatening to publish the names on the internet of every individual  
 19 signing the Referendum 71 petition.

20 **37.** KnowThyNeighbor.org and WhoSigned.org have publicly stated that they intend to  
 21 publish the names of petition signers on the internet and to make the names searchable.

22 **38.** KnowThyNeighbor.org and WhoSigned.org have stated that the purpose of placing the  
 23 names on the internet is to encourage individuals to contact any person who signed the  
 24 Referendum 71 petition.

25 **39.** The news media has widely reported that KnowThyNeighbor.org and WhoSigned.org  
 26 intend to publish the names of any individual who signs the petition on the internet.

27  
 28 <sup>1</sup> The enacted legislation subject to the referendum petition will be referred to simply as SB 5688.

1       **40.** On Saturday, July 25, 2009, Protect Marriage Washington submitted the petition with  
2 over 138,500 signatures to Defendant Reed, exceeding the number of signatures necessary to  
3 place a referendum question on the ballot.

4       **41.** By filing the petition, Plaintiffs have delayed the effective date of SB 5688. If the  
5 Secretary of State determines that petition contains a sufficient number of valid signatures, SB  
6 5688 will become law only if a majority of Washington residents vote to “approve” the bill at the  
7 next general election.

8       **42.** Defendant Reed is responsible for verifying and canvassing the signatures on the  
9 Referendum 71 petition. Proponents and opponents of Referendum 71 are permitted to have  
10 representatives present during the verification and canvass process. The statute prohibits  
11 proponents and opponents who are observing the verification and canvass process from making  
12 any records of the names, addresses, or other information contained on the petitions. Wash. Rev.  
13 Code § 29A.72.230.

14       **43.** Plaintiff Protect Marriage Washington, and its officers and directors have been subject  
15 to threats, harassment, and reprisals while attempting to gather the signatures necessary to place  
16 Referendum 71 on the ballot.

17       **44.** Petition circulators have been subjected to threats, harassment, and reprisals as they  
18 attempted to obtain the signatures necessary to place Referendum 71 on the ballot.

19       **45.** Defendant Galarza has stated that referendum petitions are “public records” within the  
20 meaning of Wash. Rev. Code § 42.56.10(2) and are subject to public disclosure pursuant to  
21 Wash. Rev. Code § 42.56.070.

22       **46.** Given the threats, harassment, and reprisals directed at Plaintiff Protect Marriage  
23 Washington, petition signers, and supporters of a traditional definition of marriage across the  
24 country, there is a reasonable probability that the disclosure of those who signed the Referendum  
25 71 petition, including disclosure of the addresses of petition signers, will result in threats,  
26 harassment, and reprisals.

1       47. The threatened publication of the petitions has created an environment that discourages  
2 Washington citizens from exercising their First Amendment rights to participate in the  
3 referendum process.

4       48. The threatened publication of the petitions discourages individuals and organizations  
5 from exercising their First Amendment rights to support the effort to encourage Washington  
6 citizens to reject SB 5688.

7       49. Plaintiffs have suffered, or will suffer, irreparable harm if the requested relief is not  
8 granted.

### 9           **LEGAL ARGUMENTS COMMON TO PLAINTIFFS' CLAIMS**

10       50. "The First Amendment is the pillar of a profound national commitment to the principle  
11 that debate on public issues should be uninhibited, robust, and wide-open . . . ." *Mont. Right to*  
12 *Life v. Eddlemann*, 999 F. Supp. 1380, 1384 (D. Mont. 1998).

13       51. "In the free society ordained by our Constitution it is not the government, but the  
14 people—individually as citizens and candidates and collectively as associations and political  
15 committees—who must retain control over the quantity and range of debate on public issues in a  
16 political campaign." *Buckley v. Valeo*, 424 U.S. 1, 57 (1976).

17       52. In *Buckley*, the Supreme Court held that any significant encroachment on First  
18 Amendment rights, such as those imposed by compelled disclosure provisions, must survive  
19 exacting scrutiny, which requires the government to craft a narrowly tailored law to serve a  
20 compelling government interest. *Buckley*, 424 U.S. at 64.

21       53. The Supreme Court has recognized that the principles applied in *Buckley* apply as  
22 forcefully to activities surrounding the referenda process. *See Buckley v. American Constitutional*  
23 *Law Foundation*, 525 U.S. 182, 192 (1999) ("[T]he First Amendment requires us to be vigilant  
24 in making those judgments, to guard against undue hindrances to political conversations and the  
25 exchange of ideas. We therefore detail why we are satisfied that . . . the restrictions in question  
26 significantly inhibit communication with voters about proposed political change, and are not  
27 warranted by the state interests (administrative efficiency, fraud detection, informing voters)  
28 alleged to justify those restrictions.") (internal citations omitted); *Citizens Against Rent Control*



1 *v. Berkeley*, 454 U.S. 290, 295 (1981) (applying *Buckley*'s contribution limit analysis in the  
2 context of ballot measure elections).

3 **54.** The Public Records Act, in so far as it results in the public disclosure of the names and  
4 addresses of petition signers, results in compelled political speech.

5 **55.** The Supreme Court has repeatedly reaffirmed that "compelled disclosure, in itself, can  
6 seriously infringe on privacy of association and belief guaranteed by the First Amendment."  
7 *Davis v. FEC*, 128 S. Ct. 2759, 2774-75 (2008) (quoting *Buckley*, 424 U.S. at 64.

8 **56.** To survive exacting scrutiny, the Public Records Act must be narrowly tailored to serve  
9 a compelling government interest. *Buckley*, 424 U.S. at 64.

10 **57.** The burden is on the State to demonstrate that the Public Records Act is narrowly  
11 tailored to serve a compelling state interest. *Cal. Pro-Life Council, Inc. v. Randolph*, 507 F.3d  
12 1172, 1178 (9th Cir. 2007) (citing *Republican Party of Minnesota v. White*, 536 U.S. 765, 774-75  
13 (2002)).

14 **58.** In the context of the First Amendment, the usual deference granted to the legislature  
15 does "not foreclose [a court's] independent judgment of the facts bearing on an issue of  
16 constitutional law." *Turner Broad. Sys. v. FEC*, 512 U.S. 622, 666 (1994) (internal citations  
17 omitted). The Court's role is to ensure that the legislature "has drawn *reasonable inferences*  
18 based on *substantial evidence*." *Id.* (emphasis added).

19 **59.** The Ninth Circuit recently held that compelled disclosure of *de minimis* support of a  
20 referenda is unconstitutional under the First Amendment. *See Canyon Ferry Road Baptist*  
21 *Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009).

22 **60.** Furthermore, even if the Public Records Act is narrowly tailored to serve a compelling  
23 government interest, it remains unconstitutional because there is a reasonable probability that the  
24 disclosure of the names of those individuals who signed the Referendum 71 petition will expose  
25 those individuals to threats, harassment, and reprisals. *See Brown v. Socialist Workers '74*  
26 *Campaign Comm.*, 459 U.S. 87 (1982) (applying the reasonable-probability test announced in  
27 *Buckley*, 424 U.S. at 73).  
28

**COUNT I – THE PUBLIC RECORDS ACT IS  
UNCONSTITUTIONAL AS APPLIED TO REFERENDUM  
PETITIONS**

61. Plaintiffs incorporate here by reference paragraphs one through sixty, *supra*, as if fully set forth herein.

62. The Public Records Act violates the First Amendment as applied to referendum petitions because the Public Records Act is not narrowly tailored to serve a compelling government interest.

63. WHEREFORE, Plaintiffs request the following relief:

a. Declare Wash. Rev. Code § 42.56.070 unconstitutional to the extent that it requires the Secretary of State to make referendum petitions submitted to the Secretary of State's office available to the public;

b. Enjoin Defendants from making referendum petitions available to the public pursuant to the Public Records Act, Wash. Rev. Code § 42.56.001 *et seq.*, or otherwise;

c. Grant Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington their costs and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and

d. Any and all other such relief as may be just and equitable.

**COUNT II – THE PUBLIC RECORDS ACT IS  
UNCONSTITUTIONAL AS APPLIED TO THE REFERENDUM  
71 PETITION BECAUSE THERE IS A REASONABLE  
PROBABILITY OF THREATS, HARASSMENT, AND  
REPRISALS**

64. Plaintiffs incorporate here by reference paragraphs one through sixty, *supra*, as if fully set forth herein.

65. In the alternative, the Public Records Act is unconstitutional as applied to the Referendum 71 petition because there is a reasonable probability that the signatories of the Referendum 71 petition will be subjected to threats, harassment, and reprisals.

66. WHEREFORE, Plaintiffs request the following relief:

a. Declare Wash. Rev. Code § 42.56.070 unconstitutional to the extent that it requires the Secretary of State to make the Referendum 71 petition, or any petition related to the definition or marriage or the rights and responsibilities that should be accorded to same-sex

1 couples, submitted to the Secretary of State's office available to the public;

2 **b.** Enjoin Defendants from making the Referendum 71 petition, or any petition related to  
3 the definition of marriage or the rights and responsibilities that should be accorded to same-  
4 sex couples, available to the public pursuant to the Public Records Act, Wash. Rev. Code §  
5 42.56.001 *et seq.*, or otherwise;

6 **c.** Grant Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington their costs  
7 and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and

8 **d.** Any and all other such relief as may be just and equitable.  
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**VERIFICATION**

I SWEAR (OR AFFIRM) UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS CONCERNING ME IN THIS COMPLAINT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated this 28th day of July, 2009.

\_\_\_\_\_  
Larry Stickney

1 Dated this 28th day of July, 2009.

2 Respectfully submitted,

3  
4 James Bopp, Jr. (Ind. Bar No. 2838-84)\*  
5 Sarah E. Troupis (Wis. Bar No. 1061515)\*  
6 Scott F. Bieniek (Ill. Bar No. 6295901)\*  
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*\*Pro Hac Vice Application Pending*